

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,)	CR. 10-50118-JLV
)	
Plaintiff,)	
)	
vs.)	ORDER GRANTING
)	CONTINUANCE
)	
LUIS OLIVARES,)	
TRAVIS BRANDIS,)	
PRECIOUS BARTLETT,)	
ETHEL THUNDERHAWK,)	
DEB DILLON,)	
MICHAEL DILLON,)	
CLAUDETTE LONG SOLDIER,)	
DEREK PETERS,)	
ROBERT GAY,)	
GERALD LONG SOLDIER, and)	
COURTNEY KROGMAN,)	
)	
Defendants.)	

Trial in the above-captioned case currently is scheduled to begin on May 31, 2011. (Docket 219). Defendant Ethel Thunder Hawk moves the court to continue all the deadlines set in the case. (Docket 236). Defendants Travis Brandis, Courtney Krogman, and Michael Dillon filed objections to the motion, arguing for severance of the trial. (Dockets 239, 245, & 247). Defendant Deb Dillon informally objects to the motion, but did not file a written objection.

The court finds severance is not appropriate at this juncture in the case. The court notes there is a clear preference for a joint trial of persons charged in a conspiracy. United States v. Ruiz, 446 F.3d 762, 772 (8th Cir. 2006); see also United States v. Kime, 99 F.3d 870, 880 (8th Cir. 1996) (“Persons charged with a conspiracy will generally be tried together, especially where proof of the charges against each of the defendants is based on the same evidence and acts. Rarely, if ever, will it be improper for co-conspirators to be tried together.”) (citations and internal quotation marks omitted). This clear preference for joinder, applicable here, may be overcome if the party moving to sever “can show that the benefits [of joinder] are outweighed by a clear likelihood of prejudice.” United States v. Clay,

579 F.3d 919, 927 (8th Cir. 2009) (citation and internal quotation marks omitted); see also United States v. Pherigo, 327 F.3d 690, 693 (8th Cir. 2003) (In “ruling on a motion for severance, a court must weigh the inconvenience and expense of separate trials against the prejudice resulting from a joint trial of co-defendants. To grant a motion for severance, the necessary prejudice must be severe or compelling.”) (citations and internal quotation marks omitted).

Mr. Brandis, Mr. Krogman, Mr. Dillon, and Ms. Dillon have not shown how they will be prejudiced by joinder. They have not alleged, for example, that continued joinder will violate their statutory or constitutional right to a speedy trial, nor have they furnished any other compelling justification to warrant severance. The court finds the inconvenience and expense of separate trials clearly outweigh any prejudice to defendants in joinder. Because Mr. Brandis, Mr. Krogman, Mr. Dillon, and Ms. Dillon have not made the requisite showing to overcome the preference for joinder, their objections to Ms. Thunder Hawk’s motion for a continuance are overruled. The court finds the ends of justice served by continuing the trial outweigh the best interests of the public and the defendants in a speedy trial insofar as counsel for Ms. Thunder Hawk has made known she needs additional time to review voluminous discovery. 18 U.S.C. § 3161(h)(7)(A). Good cause appearing, it is hereby

ORDERED that Ms. Thunder Hawk’s motion for a continuance (Docket 236) is granted and the following deadlines shall apply to all parties:

Suppression/voluntariness motions	June 14, 2011
Responses to motions due	Within seven days after motion is filed
Subpoenas for suppression hearing	June 14, 2011
Suppression/voluntariness hearing before Magistrate Judge Veronica L. Duffy	If necessary, shall be held before June 28, 2011

Applications for Writ of Habeas Corpus Ad Testificandum	July 5, 2011
Other motions	July 12, 2011
Responses to motions due	Within seven days after motion is filed
Subpoenas for trial	July 12, 2011
Plea agreement or petition to plead and statement of factual basis	July 12, 2011
Notify court of status of case	July 12, 2011
Motions <i>in limine</i>	July 19, 2011
Proposed jury instructions due	July 19, 2011
Pretrial conference	Monday, July 25, 2011, at 9 a.m.
Jury trial	Tuesday, July 26, 2011, at 9 a.m.

The period of delay resulting from this continuance is excluded in computing the time within which the trial of the case must commence. 18 U.S.C. § 3161(h)(7)(A).

Defense counsel must file with the clerk within fourteen (14) days of this order a written consent to the continuance and waiver of the Speedy Trial Act signed by each non-objecting defendant.

All other provisions of the court's scheduling and case management order (Docket 219) remain in effect unless specifically changed herein.

Dated April 28, 2011.

BY THE COURT:

/s/ Jeffrey L. Viken

JEFFREY L. VIKEN
UNITED STATES DISTRICT JUDGE